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IN THE CIRCUIT COURT OF WILL COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JOSE SOLÓRZANO, on behalf of himself and similarly situated laborers, known and unknown Plaintiff, v. EL GUERO DE CREST HILL, INC., Defendant.	Case No.: 19 CH 1196 Judge Roger D. Rickmon

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF THE PARTIES' CLASS ACTION SETTLEMENT AGREEMENT

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I. INTRODUCTION

Plaintiff Jose Solórzano ("Plaintiff"), on behalf of himself and a class of similarly situated employees move this Court for an order preliminarily approving the Parties' Class Action Settlement Agreement ("Settlement Agreement"), attached hereto as Attachment 1, and an Order approving class certification for settlement purposes, the form and manner of class notice, and scheduling a Fairness Hearing for final approval of settlement. In further support of this unopposed Motion, the Plaintiff states as follows:

II. BACKGROUND

On August 15, 2019, Plaintiff Jose Solórzano ("Plaintiff"), on behalf of himself and a class of similarly situated individuals, filed a complaint in the Circuit Court of Will County, County Department, Chancery Division, *Solórzano v. El Guero de Crest Hill, Inc*., Case No.: 19 CH 1196, (the "Lawsuit"), against Defendant. In the Lawsuit, Plaintiff alleged that Defendant violated the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq.* by obtaining confidential and sensitive unique biometric information, specifically handprints of Plaintiff and other similarly situated employees without complying with the requirements of BIPA, including: (1) failing to inform Plaintiff and similarly situated employees in writing that such biometric information was being collected; (2) failing to inform Plaintiff and similarly situated employees in writing of the specific purpose and length of term for which such biometric information was being collected, stored or used; and (3) obtaining from Plaintiff and similarly situated employees a written release authorizing the collection of such biometric information.

After almost four years of litigation in this matter, the Parties believe they are fully and adequately informed of all facts necessary to evaluate the case for settlement. Defendant denies any wrongdoing in the matter but has evaluated the risk inherent in proceeding to trial — as well

as the costs of litigation — and Defendant determined the settlement reached is an appropriate compromise. Plaintiff and his counsel likewise believe the settlement reached in this matter is a good outcome for Plaintiff and the Class. The material terms of the settlement are explained below, subject to approval by the Court. The Settlement Agreement contains all of the agreements between Plaintiff, Defendant, and their respective counsel relating to settlement of the Lawsuit. At all times, the negotiations leading to the Settlement Agreement were adversarial, non-collusive, and at arm's length.

III. SUMMARY OF SETTLEMENT TERMS

As set forth fully herein, the Parties conducted extensive discovery and engaged in extensive arms-length settlement negotiations, which culminated in the Settlement Agreement attached hereto as Attachment 1. The material terms of the settlement are as follows, subject to approval by the Court:

A. Class Definition

The class of individuals whose rights were allegedly violated as described above is to be defined for settlement purposes only as:

> All persons who have been employed by Defendant at El Guero de Crest Hill located in Crest Hill, Illinois for whom Defendant has obtained handprints for use with Defendant's biometric timekeeping system from August 15, 2014 to the date of preliminary approval.

B. Settlement Amount

Defendant shall make a total Settlement Payment of Six Hundred Twenty Thousand One Hundred and 00/100 Dollars ($620,100.00), inclusive of all settlement payments to claimants, a service award for the Named Plaintiff, Class Counsel's attorneys' fees and costs, and settlement administration costs.

The settlement fund will be apportioned for: (a) Payment of all timely claims submitted by Claimants; (b) Payment of all claims administration costs; (c) Payment to Named Plaintiff in the amount of Ten Thousand Dollars ($10,000.00) as service award for his service to the class, as approved by the Court; and (d) Payment of attorneys' fees and costs in an amount not to exceed one-third of the Net Settlement Fund, as approved by the Court.

C. Notice to Class Members

Notice of the Class Action Settlement and Claim Forms with instructions to participate in the settlement and to be excluded or object to the settlement shall be mailed via first class mail through the U.S. Postal Service, postage pre-paid. *See* Claim and Release Form, attached as Exhibit B to Attachment 1 to this Motion; *see* also Short Form Notice of the Class Action Settlement, attached as Exhibit C to Attachment 1 to this Motion, and Long Form Notice of the Class Action, attached as Exhibit D to Attachment 1 to this Motion (available upon request). In addition, Exhibit B, C, and D will be posted and available on the settlement website.

D. Service Award

As part of the Agreement, Defendant will pay Plaintiff Jose Solórzano Ten Thousand and 00/100 Dollars ($10,000.00) as a Service Award for his service to the Class and as he is being asked to execute a general release, something no other Class Member is being asked to do. The Service Award is subject to approval by the Court.

E. Attorneys' Fees and Costs

Pursuant to the Settlement Agreement, Class Counsel will seek attorneys' fees and costs in an amount not to exceed one-third of the Net Settlement Amount, or $206,697.93, subject to approval by the Court, as payment for all past and future attorneys' fees that have been or will be

expended and for all costs incurred and that have or will be incurred in seeing this matter through Final Approval, securing the Final Order and defending the settlement.

F. Claims Administration

Claims Administrator costs include all costs incurred by the Claims Administrator in connection with the administration of the Settlement Agreement and the Settlement Fund including, but not limited to, those related to sending Notice, claims processing, legal advice relating to the establishment of the Qualified Settlement Fund, and tax treatment and tax reporting of awards to claimants, preparation of tax returns (and the taxes associated with such tax returns as defined below), the Claims Administrator's fees and expenses, and costs of the claims resolution process. The Claims Administration costs shall be paid from the Settlement Amount, and the Defendant will not have any responsibility for contributing additional funds to the Qualified Settlement Fund.

IV. PRELIMINARY APPROVAL OF THE PARTIES' CLASS ACTION SETTLEMENT IS APPROPRIATE

Pursuant to 735 ILCS 5/2 801, an action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class if the court finds: (1) The class is so numerous that joinder of all members is impracticable; (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; (3) The representative parties will fairly and adequately protect the interest of the class; and (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy. Plaintiff's claim meets these requirements.

Courts naturally favor the settlement of class action litigation. *See* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 11.41 (3d ed. 1992) (gathering cases); see also*, Joseph v. Monster, Inc*., 2018 Ill. Cir. LEXIS 64, *14-15 ("The law favors settlement of class actions, and

a trial court should not 'disapprove a settlement. . . unless, taken as a whole, the settlement appears on its face so unfair as to preclude judicial approval.'" (citing *Gowdey v. Commonwealth Edison Co*., 37 Ill. App. 3d 140, 149-150, 345 N.E.2d 785 (1976)). There exists a strong public policy in favor of settlement and the avoidance of costly and time-consuming litigation. *Security Pacific Financial Services v. Jefferson*, 259 Ill. App. 3d 914, 919 (1994). The proposed Settlement therefore is the best vehicle for Class Members to receive the relief to which they are entitled in a prompt and efficient manner.

The *Manual for Complex Litigation* describes a three-step procedure for approval of class action settlements: (1) Preliminary approval of the proposed settlement at an informal hearing; (2) Dissemination of mailed and/or published notice of the settlement to all affected class members; and (3) A "formal fairness hearing" or final settlement approval hearing, at which class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented. *Manual for Compl. Lit., Third* at § 21.632–34. This procedure, used by courts in this state and endorsed by class action commentator Prof. Herbert Newberg, safeguards class members' due process rights and enables the court to fulfill its role as the guardian of class interests. *See* 2 Newberg & Conte, at § 11.22, *et seq*. The decision regarding class certification falls within the discretion of the circuit court, but the court's discretion is not unlimited as it must be exercised within the framework of the rules of procedure governing class actions. *Lee v. Buth-Na-Bodhaige, Inc*., 2019 IL App (5th) 180033, ¶ 53 (citing *Bueker v. Madison County*, 2016 IL App (5th) 150282, ¶ 22).

Illinois courts also look to federal case law for guidance on class action issues because the Illinois class action statute is patterned on Rule 23 of the Federal Rules of Civil Procedure. *Ballard RN Ctr., Inc. v. Kohll's Pharmacy & Homecare, Inc.*, 2015 IL 118644, ¶ 40. In this circuit, federal

courts have determined that the decision to approve or reject a proposed settlement is left to the Court's sound discretion. *Westefer v. Snyder*, 2006 U.S. Dist. LEXIS 64976, at *7 (S.D. Ill. Sep. 12, 2006) (citing *Guillory v. American Tobacco Co*., 2001 U.S. Dist. LEXIS 3353 at *8 (N.D. Ill. Mar. 20, 2001)).

Plaintiff requests that this Court take the first step in the settlement approval process by granting preliminary approval of the proposed Settlement. The purpose of preliminary evaluation of proposed class action settlements is to determine whether the settlement is within the "range of reasonableness," and thus whether notice to the class of the settlement's term and the scheduling of a formal fairness hearing is worthwhile. *See* 2 Newberg & Conte, at § 11.25 at 11-37; see also *Stonecrafters, Inc., v. Wholesale Life Ins. Brokerage*, 393 Ill. App. 3d 951 (2009). The Court's grant of preliminary approval will allow all Class Members to receive Notice of the proposed Settlement's terms and the process to object or be excluded from the settlement, and of the date and time of the fairness hearing, at which Class Members may be heard regarding the Settlement and at which further evidence and argument concerning the fairness, adequacy, and reasonableness of the Settlement may be presented. *See Manual for Compl. Lit*., *Third* at §§ 13.14, 21.632. Neither formal notice nor a hearing is required at the preliminary approval stage; the Court may grant such relief upon an informal application by the settling parties, and may conduct any necessary hearing in court or in chambers, at the Court's discretion. *Id*. § 13.14.

A. Numerosity – 735 ILCS 5/2 801(1)

The class is so numerous that joinder of all members is impracticable. "When analyzing whether joinder is impracticable, factors such as judicial economy, geographic diversity of class members, and the ability of class members to institute individual lawsuits should also be considered." *N.B. v. Hamos*, 26 F.Supp.3d 756, 770-71 (N.D. Ill. 2014) (citing *Arenson v.*

Whitehall Convalescent & Nursing Home, Inc., 164 F.R.D. 659, 663 (N.D. Ill. 1996). To determine whether joinder is impracticable courts must consider the relevant factors in each case. *Barner v. City of Harvey*, 1997 U.S. Dist. LEXIS 3570, at *7 (N.D. Ill. Mar. 24, 1997). "To require a multiplicity of suits by similarly situated small claimants would run counter to one of the prime purposes of a class action." *Id.* at *7-8 (citing *Swanson v. Am. Consumer Indus.*, 415 F.2d 1326, 1333 (7th Cir. 1966)). A class representative must show that it is extremely difficult or inconvenient to join all the members of the class. *Anderson v. Weinert Enterprises*, 986 F.3d 773, 777 (7th Cir. 2021). In this case, the Parties have established that the class is composed of approximately 692 individuals; it would be extremely difficult to join all 692 members of the class. The size of this putative class easily satisfies 735 ILCS 5/2 801(1).

B. Commonality – 735 ILCS 5/2 801(2)

For a class to be certified, questions of law or fact must exist common to the class. 735 ILCS 5/2 801(2). As long as common questions predominate, the existence of individual issues will not defeat class certification. *Ballard RN Ctr*, 2014 IL App (1st) 131543 at ¶ 21 (citing *Miner v. Gillette Co.,* 87 Ill. 2d 7, 19 (1981)). "The test for predominance is not whether the common issues outnumber the individual ones, but whether common or individual issues will be the object of most of the efforts of the litigants and the court." *Id.* (citing *Smith v. Illinois Central R.R. Co.*, 223 Ill. 2d 441, 448-49 (2006)). This requirement is established by showing that successful adjudication of the class representative's individual claims will establish a right of recovery in other class members. *Slimack v. Country Life Ins. Co.,* 227 Ill. App. 3d 287, 292-93, 169 Ill. Dec. 190, 194, 591 N.E.2d 70, 74 (1992). In order to satisfy this requirement, there needs to be just one common question of law or fact but that common question cannot be just a superficial similarity.

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011); *Jamie S. v. Milwaukee Public Schools*, 668 F.3d 481, 497 (7th Cir. 2012).

Here, for purposes of establishing a settlement class, common questions of law and fact in this case predominate over any individual issues. Plaintiff's claim is based on questions of fact and law common to the class. Each Class Member was employed by Defendant and subject to the same practices that allegedly violated BIPA during the applicable time period.

These common questions of law and fact include, without limitation: (a) whether Defendant required the Class to use their handprints to clock in and clock out; (b) Whether defendant collected the Class's "biometric identifiers" or "biometric information" as defined by BIPA; (c) Whether Defendant complied with procedures set forth in BIPA in obtaining, storing and using the biometric identifiers or information of the Class, 740 ILCS 14/15(a-b); and (d). whether Defendant complied with requirements of BIPA to safeguard the biometric identifiers and information of the Class, 740 ILCS 14/15(c-d).

C. Adequacy of Representation – 735 ILCS 5/2 801(3)

As a prerequisite for maintenance of a class action, the court must find that the representative parties will fairly and adequately protect the interests of the class. *Lee*, 2019 IL App (5th) 180033 at ¶ 53. When evaluating whether the class representative can provide fair and adequate representation, the court must determine that the plaintiff's claim is not antithetical to those of other class members. *Id* at ¶ 63. However, a class representative may not be disqualified merely because his claim is not exactly the same as the claims of other potential class members. *Bueker*, 2016 IL App (5th) 150282 at ¶ 41. The court need only determine that the representative is not seeking relief antagonistic to the interests of the potential class members. *Id.*

For purposes of establishing a settlement class, Plaintiff satisfies this standard. Plaintiff does not have antagonistic or conflicting claims with other members of the class. Plaintiff and the class were all employed by Defendant in the State of Illinois, and all were subject to the same practices that violated BIPA during the applicable period. Plaintiff also has a sufficient interest in the outcome to ensure vigorous advocacy. Adequacy requires the Named Plaintiff to be conscientious and to "understand the basic facts underlying [his] claims." *Steffek v. Client Services*, 2018 U.S. Dist. LEXIS 127447, at *7 (E.D. Wis. July 31, 2018) (citing *In re Discovery Zone Securities Litigation*, 169 F.R.D. 104, 109 (N.D. Ill. 1996)). Plaintiff here understands the general foundation of the case. He participated in the parties' discovery process and was active in negotiations to explore resolution of this matter. This qualifies the Named Plaintiff as a "conscientious representative plaintiff" and satisfies this element for purposes of establishing a settlement class. *Robles v. Corporate Receivables, Inc.*, 220 F.R.D. 306, 314 (N.D. Ill. 2004). Plaintiff has demonstrated that he has commitment to the case and has adequately represented the class over the nearly four years of this litigation thus far and will continue to do so. *Ocampo v. GC Services Ltd. Partnership*, 2018 U.S. Dist. LEXIS 200836, at *25-27 (N.D. Ill. Nov. 28, 2018) (citing *Rand v. Monsanto Co.*, 926 F.2d 596, 599 (7th Cir. 1991)).

Plaintiff and Plaintiff's counsel, Christopher J. Williams and Sheila Maddali of the National Legal Advocacy Network, and Kevin Herrera, Mark Birhanu and Ada Sandoval of the Legal Department of the Raise the Floor Alliance will also fairly and adequately protect the interests of the class. As explained, *infra*, Section III(D) Plaintiff's attorneys are qualified and able to conduct the proposed litigation vigorously.

D. Appropriate Method for Adjudication of Controversy – 735 ILCS 5/2 801(4)

"In deciding whether a class action lawsuit is an appropriate way to adjudicate a controversy, courts consider whether it (1) serves the economies of time, effort, and expense, (2) prevents possible inconsistent results, and (3) otherwise accomplishes the ends of equity and justice." *Ballard RN Ctr.*, 2014 IL App (1st) 131543, ¶ 35 (citing *Gordon v. Boden*, 224 Ill. App. 3d 195, 203 (1991)); *Society of St. Francis v. Dulman*, 98 Ill. App. 3d 16, 19 (1981).

Courts' consideration of these factors often mirrors the analysis of the other section 2-801 elements, particularly the elements of numerosity and commonality. "Where a class is numerous and common questions of fact and law predominate, it is more efficient to address the common issues in a single action instead of litigating each individual case separately." *Ballard RN Ctr.*, 2014 IL App (1st) 131543, ¶ 35 (citing *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill.App.3d 538, 552, 278 Ill.Dec. 276, 798 N.E.2d 123 (2003)); *Fakhoury v. Pappas*, 395 Ill. App. 3d 302, 316 (2009) ("Certainly having one common complaint rather than thousands of separate complaints considering the same issue promotes the economics of time, effort, expense and uniformity over requiring thousands of complaints"). Here, a class action is an appropriate method for fairly and efficiently adjudicating the controversy as the first three prerequisites of section 2-801 are fully met.

V. ARGUMENT

A. The Court Should Grant Preliminary Approval to the Parties' Settlement

The settlement or compromise of a class action requires this Court's approval. There exists a strong public policy in favor of settlement and the avoidance of costly and time-consuming litigation. *Security Pacific*, 259 Ill. App. 3d at 919. The law encourages settlement of class actions, and a voluntary settlement is the preferred method of class action resolution. *Monster, Inc.*, 2018 Ill. Cir. LEXIS 64 at *14-15; *Isby, et al. v. Bayh*, *et al.*, 75 F.3d 1191, 1196 (7th Cir. 1996).

B. Standard for Preliminary Approval

The standard to be used in evaluating the compromise settlement of a class action is that the agreement must be fair, reasonable, and adequate. *Steinberg v. System Software Associates, Inc.*, 306 Ill. App. 3d 157, 169 (1999).

While the determination of whether a settlement is fair, reasonable, and adequate requires the examination of a combination of factors, the principle factor is a balancing or comparison of the terms of the compromise with the likely rewards of litigation, as well as a determination of whether the settlement is in the best interests of all those who will be affected by it. *Chicago v. Korshak*, 206 Ill. App. 3d 968, 972, 151 Ill. Dec. 797, 799-800 (1990). Although review of class action settlements necessarily proceeds on a case-by-case basis, certain factors have been consistently identified as relevant to the fairness determination. Among the factors which the trial court should consider in judging the fairness of the proposal are the following: (1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed. *Id*.

In evaluating the fairness, reasonableness, and adequacy of the settlement, the Court should view the facts in the light most favorable to the settlement. *Isby*, 75 F.3d at 1199. In making its decision as to whether to certify a settlement class, a court should not judge the legal and factual questions by the same criteria applied in a trial on the merits, nor should a court turn the settlement approval hearing into a trial. *GMAC Mortgage Corp. of Pennsylvania v. Stapleton*, 236 Ill. App. 3d 486, 493 (1992). To do this would defeat the purposes of reaching a compromise, such as avoiding a determination of contested issues and dispensing with extensive and wasteful litigation.

Id. Accordingly, a class that is suitable for settlement purposes might not be suitable for litigation purposes because the settlement might eliminate all of the contested issues that the court would have to resolve if the case went to trial. *Cohen v. Blockbuster Entertainment, Inc*., 376 Ill. App. 3d 588, 598 (2007).

C. The Parties' Agreement is Fair, Reasonable, and Adequate

1. *The Strength of the Case for Plaintiff on the Merits, Balanced Against the Money or Other Relief Offered in the Settlement*

As various courts have noted, "the strength of the plaintiff's case on the merits balanced against the amount offered in the settlement" is viewed as the "most important factor relative to the fairness of a class action settlement." *Redman v. Radioshack Corp*, 2014 U.S. Dist. LEXIS 15880, at *10 (N.D. Ill. 2014). In this case, Defendant has advanced various arguments that it believes are viable defenses to both liability and class certification and, at a minimum, has demonstrated that prevailing on the merits or even certifying a class is uncertain if this matter proceeds in the absence of a settlement. For example, Defendant has asserted that it falls under the "financial institution" exception to BIPA as it cashes checks for customers. In addition, the Illinois Supreme Court has ruled that a BIPA claim accrues each time that biometric identifiers or information are collected or disseminated, and not only on first scan and first transmission. *Cothron v. White Castle System, Inc.*, --- N.E.3d ----, 2023 IL 128004, ¶ 45 (2023). This allows for the possibility of a large judgement for Plaintiff and the Class. However, a high number of accrued BIPA claims also raises the risk that a district court would use its discretion to reduce the Plaintiff's judgement amount in consideration of a defense of potential destruction of the Defendant's business. *Id.* at ¶ 42.[1]

[1] Plaintiff does not join in this defense.

Class Members will likely receive over $1,000 in damages, the amount recoverable under BIPA for a negligent violation by a private entity, making the relief offered through this settlement strong relative to the merits of the case.

Counsel for both Parties are experienced in class action litigation. The Parties negotiated a Class Settlement Fund which Plaintiff's Counsel believe will provide Class Members who make a successful claim on the Class Settlement Fund with full monetary relief based on Plaintiff's theory of liability.

Given the potentially viable defense asserted by Defendant, and the recovery that Plaintiff and Class Members will receive, approval of this settlement is warranted.

2. *The Defendant's Ability to Pay*

The length and uncertainty of continued litigation creates a risk that, even if Plaintiff obtained a successful outcome at trial, Defendant might not be able to satisfy a large judgment. Maintaining prolonged litigation would place a heavy financial burden on Defendant. As a result of these uncertainties, Plaintiff's counsel believes that a settlement that provides class members with full recovery under Plaintiff's theory of the case at this time is appropriate and to the benefit of Class Members.

3. *The Complexity, Length and Expense of Further Litigation*

An early settlement also allows Plaintiff and the Class Members to recover significant monetary damages while avoiding what certainly would have been complex, long, and expensive litigation**.** The legal issues presented in this Lawsuit are complex and, in some cases, novel. Given the uncertainty of whether the claims could be certified for class treatment, Defendant's defense on the merits, and the difficulties of proof, the terms of the Settlement Agreement compromising the Class are fair and reasonable.

Indeed, further litigation of these claims would result in lengthy proceedings involving extended and expensive written and oral discovery, class certification proceedings, and summary judgment briefing, all of which would have undoubtedly additional months to litigation before Plaintiff could ever reach a trial.

4. *The Amount of Opposition to the Settlement*

Because notice has not been sent, it is impossible to know if there will be any objectors to the Settlement. However, the Parties are not aware of any objectors to the Settlement at this time. The Named Plaintiff and Plaintiff's Counsel believe that there will not be any objectors to the Settlement Agreement.

5. *The Presence of Collusion in Reaching a Settlement*

A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair. *National Rural Telecommunications Cooperative v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). See also *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987) ("where . . . a proposed class settlement has been reached after meaningful discovery, after arm's-length negotiation by capable counsel, it is presumptively fair").

The Settlement here is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation in general and with the legal and factual issues of BIPA violations in particular.

The settlement was reached after a period of extensive investigation, informal discovery, frequent meetings and discussions between Class Counsel and the Named Plaintiff, and discussions between Class Counsel and Defendant's Counsel culminating in the Settlement attached hereto**.** The settlement negotiations were informed by Defendant's production of relevant records.

6. *The Reaction of the Class to the Settlement*

Assuming a participation rate by Class Members of 100%, each Class Member will receive an estimated minimum payment of $800.

While the Parties have created a strong notice mechanism in this matter, it remains likely that not all class members will timely return a valid claim form. In the event that the sum of Settlement Payments to Claimants, Administration Costs, attorneys' fees awards by the Court, General Release Payments and Service Payments does not exceed the settlement amount, any remaining funds shall be redistributed between Claimants on a pro rata basis. Class members are therefore likely to receive a payment well above the estimated minimum payment meaning that they will receive significant damages in line with the $1,000 recoverable for a negligent BIPA violation.

Named Plaintiff and their Counsel believe this is a good outcome for the Class and expect a positive reaction to the Settlement.

7. *The Opinion of Competent Counsel*

Counsel for Plaintiff and Defendants are experienced litigators, and both have significant experience within employment law specifically. In evaluating the fairness of a settlement, courts may "rely heavily on the opinion of competent counsel." *In re AT&T Mobility Wireless Data Services Sales Litigation*, 270 F.R.D. 330, 350 (N.D.Ill. 2010) (citing *Gautreaux v. Pierce*, 690 F.2d 616, 634 (7th Cir. 1982)). The Settlement Agreement here is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation in general and with the legal and factual issues of BIPA violations in particular**.** In negotiating this Settlement Agreement, Plaintiff's counsel had the benefit of years of experience advocating for the interests of low wage laborers combined with an in-depth familiarity with the facts of this case. In addition, Plaintiff's Counsel have successfully litigated and resolved over 400 employment law

cases of which over 40 were class actions, all involving low wage laborers. Similarly, Counsel for Defendant are highly experienced class action litigators. Plaintiff's Counsel support the resulting settlement as fair and as providing reasonable relief to the members of the Class.

8. *The Stage of Proceedings and the Amount of Discovery Completed*

Class Counsel conducted extensive informal discovery and reviewed hundreds of documents produced by Defendant and the third-party vendor, Midwest, relating to the biometric handprint software used by the Defendant and employee biometric information that was sent to a third-party vendor. This exchange of documents informed the Parties settlement negotiations.

D. The Proposed Class Notice is Fair and Satisfies Due Process

For any class certified under 735 ILCS 5/2 801, procedural due process requires the following: (1) the plaintiff must receive notice plus an opportunity to be heard and participate in the litigation, whether in person or through counsel; (2) the notice must be the best practicable, reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections; (3) the notice should describe the action and plaintiffs' rights in it; (4) an absent plaintiff must be provided with an opportunity to remove himself from the class by executing and returning an "opt out" or "request for exclusion" form to the court; and (5) the named plaintiff must at all times adequately represent the interests of the absent class members. *Lee*, 2019 IL App (5th) 180033 at ¶ 79.

The proposed forms of the Class Notice, the short form attached as Exhibit C to Attachment 1 that will be mailed to Class Members and the long form attached as Exhibit D to Attachment 1 that will be available to Class Members upon request, describes the Settlement Agreement and notice plan set forth in Section VI of the Settlement Agreement which are consistent with the due process requirements of 735 ILCS 5/2 801. The Class Notice describes the nature of the case, defines the class and the class claims, and walks individuals through a series of questions that

explain in plain language the terms of the Settlement Agreement. It informs individuals that they have the option to participate (and how to do so), to affirmatively opt out of the class (and how to do so) and to object to the Settlement (and how to do so), and the different consequences of each action. It identifies Class Counsel, explains that potential Class Members have a right to seek counsel of their own to assist with the claims process. The Class Notice also informs potential Class Members of the date of the Court's Fairness Hearing and explains that potential Class Members have a right to provide comments about or express disagreement with the Settlement at the Fairness Hearing. Finally, the Class Notice informs Class Members of the minimum payment they will receive under the settlement assuming a 100% participation rate. Information relevant to the Litigation and the Settlement (including the notices and a downloadable claim form will also be made available on a settlement website to be established by the Claims Administrator.

The plan for Class Notice in this case satisfies due process. As detailed in the Settlement Agreement, direct notice consisting of a Claim Form and Notice Packet will be sent via first-class mail to the last known address of each Class Member as maintained in Defendants' Class Data.

E. Plaintiff's Counsel Should Be Appointed Class Counsel

735 ILCS 5/2 801(3) requires that the attorney for the representative party in a Class Action be qualified, experienced, and generally able to conduct the proposed litigation. *Miner,* 87 Ill. 2d at 14; see also *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶ 16. In this case, this requirement is met. Plaintiff's attorneys have extensive experience and expertise in complex employment litigation and class action proceedings and are qualified and able to conduct this litigation. Plaintiff's counsel, Christopher J. Williams, Sheila Maddali, Kevin Herrera, Mark Birhanu and Ada Sandoval, have collectively been lead counsel or co-counsel in over 400employment litigation cases filed in the Circuit Court of Cook County and the Northern District

of Illinois, of which over 40 have been class actions, including cases involving claims arising under BIPA.[2]

[2] Plaintiff's Counsel have regularly been designated as class counsel in class action employment litigation including: *Pruitt, et al. v. Quality Labor Services, et al.*, Case No. 16 C 09718 (N.D. Ill.) (D.E. 219) (Preliminary Approval 2/17/22); *Perlmutter, et al. v. Houlihan Smith & Co., Inc.*, Case No. 10 CH 50204 (Cook Cty. Cir. Ct., Ill.) (Final Approval of Partial Class Action Settlement Agreement 4/25/22); *Zollicoffer, et al. v. MPS Chicago, Inc.,* Case No. 16 C 11086 (N.D. Ill.) (D.E. 223) (Final Approval 10/21/21); *Hunt, et al. v. Personnel Staffing Group, LLC, et al.,* Case No. 16 C 11086 (N.D. Ill.) (D.E. 188) (Final Approval of Partial Class Action Settlement Agreement 8/04/20); *Smith, et al. v. MVP Workforce, LLC, et al.,* Case No. 18 C 03718 (N.D. Ill.) (D.E. 113) (Final Approval 6/18/20); *Hurtado, et al. v. American Quest Staffing Solutions, Inc.,* Case No. 18 CH 02901 (Cook Cty. Cir. Ct., Ill.) (Final Approval 4/10/19); *Merida, et al. v. Elite Staffing, Inc.,* Case No. 17 CH 02901 (Cook Cty. Cir. Ct., Ill.) (Final Approval 1/15/19); *Sykes v. IFCO Systems US, LLC.,* 2017 CH 9695 (Cir. Ct. look County, Ill.) (J. Pantle); *Bradley v. Silverstar, Ltd.,* 16 C 10259 (N.D.Ill) (Dkt. No. 72); *Solórzano et al. v. Andrews Staffing, Inc., et al.,* Case No. 16 CH 07910 (Cir. Ct. look County, Ill. (J. Taylor); *Arroyo et al. v. Andrews Staffing, Inc., et al.,* Case No. 16 CH 08718 (Cir. Ct. look County, Ill. (J Evans); *Edwards v. Surge Staffing, LLC.,* Case No. 16 CH 03215 (Cook Cty. Cir. Ct, Ill.)(Meyerson P.); *Baker v. Elite Staffing, Inc.,* 15 C 3246 (N.D.Ill) (Dkt. No. 55); *Lucas .v Ferran Candy Company et al.* 13 C 1525 (N.D. Ill) (Dkt. No.194); *Romero v. Active Roofing Company, Inc.,* Case No. 15 C 1347 (N.D. Ill) (Dkt. No 109); *Mejia v. Windward Roofing and Construction, Inc.,* Case No. 15 C 5687 (N.D. Ill) (Dkt. No 53); *Gutierrez v. Addison Hotels, LLC* Case No. 15 C 2021 (N.D. Ill.) (D.E. 44) (Final Approval 5/9/16); *McDowell et al. v. Accurate Personnel, LLC* Case No. 14 C 8211 (N.D. Ill.) (D.E. 68) (Preliminary Approval 5/4/16); *Hoffman et al. v. RoadLink Workforce Solutions, LLC et al.,* Case No. 12 C 7323 (N.D. Ill.) (D.E. 154) (Final Approval 1/29/16); *Mayfield et al. v. Versant Supply Chain, Inc. et al.,* Case No. 14 C 7024 (N.D. Ill.) (D.E. 61) (Final Approval 12/15/1); *Ramirez v. Staffing Network et al.,* Case No. 13 C 6501 (N.D. Ill.) (D.E. 142)(Final Approval 7/24/15); *Martinez et al. v. Staffing Network et al.,* Case No. 13 C 1381 (N.D. Ill.) (D.E. 143) (Final Approval 6/30/15); *Alvarado et al. v. Aerotek*, Case No. 13 C 6843 (Final Approval 1/29/2015); *Dickerson v. Rogers' Premier Enterprises, LLC* Case No.13 C 7154 (Final Approval 01/07/15); *Hernandez v. ASG Staffing, Inc.,* Case No. 12-2068 (Final Approval 12/11/14); *Blancas et al. v. Cairo and Sons Roofing, Co. Inc.,* Case 12 C 2636 (Final Approval 12/12/2013); *Dean et al. v. Eclipse Advantage Inc., et al* Case 11 C 8285 (Final Approval 12/17/2013); *Gallegos et al v. Midway Building Services, LTD et al.,* Case No. 12 C 4032 (Final Approval 10/02/2013); *Craig v. EmployBridge et al.,* Case No. 11 C 3818 (Final Approval 04/04/13); *Smith et al. v. Dollar Tree Distribution, Inc.,* Case No. 12 C 3240 (Final Approval 2/27/13); *Ramirez et al. v. Paramount Staffing of Chicago, Inc.,* Case No. 11 C 4163 (Final Approval 1/29/13); *Bautista et al v. Real Time Staffing, Inc.,* Case No. 10 C 0644 (Final Approval 09/06/12); *Ochoa et al v. Fresh Farms International Market, Inc. et al.,* Case No.11 C 2229 (Final Approval 07/12/12); *Jones et al v. Simos Insourcing Solutions, Inc.,* Case No. 11 C 3331 (Final Approval 05/04/12); *Francisco et al v. Remedial Environmental Manpower, Inc. et al.,* Case No. 11 C 2162, (Final Approval 04/25/12); *Alvarez et al v. Staffing Partners, Inc. et al.,* Case No. 10 C 6083 (Final Approval 01/17/12); *Craig et al v. Staffing Solutions Southeast, Inc.,* Case No. 11 C 3818 (Final Approval 06/06/11); *Andrade et al v. Ideal Staffing Solutions, Inc. et al.,* Case No. 08 C 4912 (Final Approval 03/29/10); *Arrez et al v. Kelly Services, Inc.,* Case No. 07 C 1289 (Final Approval 10/08/09); *Acosta et al v. Scott Labor LLC et al.,* Case No. 05 C 2518 (Final Approval 03/10/08); *Ortegón et al v. Staffing Network Holdings, LLC et al.,* Case No. 06 C 4053 (Final Approval 03/13/07); *Garcia et al v. Ron's Temporary Help Services, Inc. et*

F. Plaintiff's Request for Fees and Costs is Fair and Reasonable

Section VII of the Settlement Agreement provides that Plaintiff's Counsel will receive Six Hundred Twenty Thousand One Hundred and 00/100 Dollars ($620,100.00) as approved by the Court, for all attorneys' fees and costs incurred and to be incurred in seeing this matter through Final Approval, including: (i) obtaining Preliminary Approval from the Court; (ii) responding to inquiries from and otherwise assisting Class Members regarding the Settlement; (iii) assisting in the review of claims submitted by Class Members; (iv) assisting in resolving any objections; and (v) defending the Settlement and securing the Final Order, including the conduct of any appellate action.

The fee requested here is expected to be less than Plaintiff's attorneys' lodestar at the time that the Parties move for final approval of the Parties stipulation of settlement. Additionally, the fee award will be justified by the excellent result that will be obtained for the 692-member Class, all of which are eligible to receive up to or above the damages recoverable for negligent violations of BIPA.

IV. CONCLUSION

For the foregoing reasons, the Plaintiff requests that the Court: (i) grant this Unopposed Motion for Preliminary Approval of the Parties' Class Action Settlement; (ii) approve class certification of the class identified herein; (iii) approve the Notice of Class Action, Proposed Settlement and Hearing; (iv) authorize notice to the Class; (v) set a date for the Fairness Hearing; (vi) enter the Proposed Order of Preliminary Approval attached hereto as Exhibit E to Attachment 1; and (vii) grant all further relief deemed just and proper.

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al., Case No. 06 C 5066 (Final Approval 04/03/07); *Camacho et al v. Metrostaff, Inc. et al*., Case No. 05 C 2682 (Final Approval 05/17/06).

Respectfully submitted,

July 11, 2023

s/Christopher J. Williams

One Attorneys for Plaintiff